

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

ROBERT SIMMONS

PETITIONER

V.

NO. 4:16-CV-51-DMB-JMV

MARSHALL FISHER, et al.

RESPONDENTS

CONSOLIDATED WITH

ROBERT SIMMONS

PETITIONER

V.

NO. 4:16-CV-159-DMB-JMV

MARSHALL FISHER, et al.

RESPONDENTS

ORDER

On May 9, 2017, United States Magistrate Judge Jane M. Virden issued a Report and Recommendation recommending that Robert Simmons' petition for a writ of habeas corpus be dismissed for failure to state a claim and failure to exhaust state remedies. Doc. #17 at 4; *Simmons v. Fisher*, No. 4:16-cv-159 (N.D. Miss. May 9, 2017), at Doc. #10.¹ The Report and Recommendation warned:

Objections [to the Report and Recommendation] must be in writing and must be filed within fourteen (14) days of this date, and "a party's failure to file written objections to the findings, conclusions, and recommendation in a magistrate judge's report and recommendation within [14] days after being served with a copy shall bar that party, except on grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court" *Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc)(citations omitted); *see also United States v. Carrillo-Morales*, 27 F.3d 1054, 1061-62 (5th Cir. 1994), *cert. denied*, 513 U.S. 1178, 115 S.Ct. 1163, 130 L. Ed. 1119 (1995).

Doc. #17 at 5.

On May 9, 2017, the Report and Recommendation was mailed to Simmons at his last

¹ On January 24, 2017, this Court ordered the Clerk of the Court to consolidate No. 4:16-cv-51 with No. 4:16-cv-159 because both involve the same petition for writ of habeas corpus. *See* Doc. #15.

known address. To date, no objections to the Report and Recommendation have been filed. Accordingly, this Court's review of the Report and Recommendation is limited to plain error. *Morales v. Mosley*, No. 3:13-cv-848, 2014 WL 5410326, at *2 (S.D. Miss. Oct. 22, 2014) (citing *Shelby v. City of El Paso*, 577 F. App'x 327, 331 (5th Cir. 2014)) ("When there has been no objection to a report and recommendation, review is limited to plain error.").

The Court has reviewed the Report and Recommendation and found no plain error. It is, therefore, **ORDERED**:

1. The May 9, 2017, Report and Recommendation [17] is **ADOPTED** as the opinion of the Court;

2. Respondents' motion to dismiss [8] in No. 4:16-cv-159-DMB-JMV is **GRANTED**;

3. Simmons' petition for a writ of habeas corpus [1] in No. 4:16-cv-159-DMB-JMV is **DISMISSED with prejudice** for failure to state a claim upon which relief can be granted and failure to exhaust state remedies; and

4. These consolidated cases—No. 4:16-cv-51 and No. 4:16-cv-159—are **CLOSED**.

SO ORDERED, this 10th day of July, 2017.

/s/Debra M. Brown
UNITED STATES DISTRICT JUDGE